

SERVED: May 4, 1999

NTSB Order No. EA-4757

UNITED STATES OF AMERICA  
**NATIONAL TRANSPORTATION SAFETY BOARD**  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 28th day of April, 1999

_____	)	
Petition of	)	
	)	
ELMER ALLEN PROPST	)	
	)	
for review of the denial by	)	Docket SM-4284
the Administrator of the	)	
Federal Aviation Administration	)	
of the issuance of an airman	)	
medical certificate.	)	
_____	)	

**OPINION AND ORDER**

Petitioner has appealed from an order issued by Chief Administrative Law Judge William E. Fowler, Jr., dated May 15, 1998, granting the Administrator's motion to dismiss the petition for review, as well as the law judge's June 16, 1998 order, denying reconsideration.<sup>1</sup> The Administrator has filed a brief in reply, urging the Board to affirm the law judge's orders. For the reasons that follow, petitioner's appeal is denied and the petition for review is dismissed.

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<sup>1</sup>The law judge's orders are attached.

On August 21, 1996, petitioner applied for a second-class airman medical certificate. Petitioner's aviation medical examiner withheld issuance pending further review, and the application was forwarded to the Federal Air Surgeon for his consideration.<sup>2</sup> On December 2, 1997, the Federal Air Surgeon denied the application for airman medical certification based on petitioner's history of a psychosis.<sup>3</sup>

The record in this matter establishes that in 1971, the Board found petitioner specifically disqualified for medical certification because of a history of psychosis.

Administrator v. Propst, 1 NTSB 1248, *recon. denied*, 1 NTSB 1247 (1971). Since that adjudication, petitioner has endeavored, on numerous occasions, to regain his medical certification. In each attempt he has tried to attack the underlying merits of the case put forth by the Administrator in 1971. And, each attempt has failed, because petitioner has been, and still is, foreclosed from re-litigating this issue under the doctrine of *res judicata*.<sup>4</sup> The law judge's

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<sup>2</sup>An earlier appeal of the denial of this application by the FAA's Medical Review Branch was dismissed as moot. Petition of Propst, NTSB Order No. EA-4682 (1998).

<sup>3</sup>Sections 67.207 and 67.307(a)(2) and (c) of the Federal Aviation Regulations preclude issuance of a medical certificate to an airman with an established history of a psychosis, or other mental condition that makes the person unable to safely perform the duties or exercise the privileges of the airman certificate or may reasonably be expected to do so for the duration of the medical certificate for which the person has applied.

<sup>4</sup>See Petition of Propst, 2 NTSB 2228, *recon. denied*, 2

underlying order provides a thorough discussion of applicable precedent, and need not be repeated here.<sup>5</sup> See also, Petition of Parker, NTSB Order No. EA-4233 at 5, n.6 (1994), and cases cited therein.

As the law judge notes in his May 15, 1998 order in this matter, although petitioner may not re-litigate the merits of the 1971 decision in this forum, he may use his most recent psychiatric evaluations in support of an application for a special issuance medical certificate under the provisions of FAR Section 67.401(a). And, we note, attached to petitioner's appeal brief is a letter dated May 27, 1998, from the Federal Air Surgeon, granting petitioner authorization for special issuance of a second-class airman medical certificate.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Petitioner's appeal is denied; and
2. The law judge's order dismissing the petition for review is affirmed.

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NTSB 2231 (1976); Administrator v. Propst, 3 NTSB 268 (1977); Administrator v. Propst, 4 NTSB 1259 (1984).

<sup>5</sup>Petitioner's claim of personal bias or disqualification of the law judge is unsubstantiated. The law judge was not required to withdraw from this proceeding under the Board's Rules of Practice, 49 CFR § 821.35(c).

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.